

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants: Daouse et al.
Appl. No.: 10/599,311
Conf. No.: 6771
Filed: September 25, 2006
Title: PROCESS FOR PREPARING, PRIOR TO FILLING, A WAFER CORNET,
CORNET THUS OBTAINED AND INSTALLATION FOR IMPLEMENTING
THE PROCESS
Art Unit: 1794
Examiner: Jerry W. Anderson
Docket No.: 3712036-00754

Commissioner for Patents
P.O. Box 1450
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APPELLANTS' REPLY BRIEF

Sir:

I. INTRODUCTION

Appellants submit Appellants' Reply Brief in response to the Examiner's Answer dated April 29, 2011 pursuant to 37 C.F.R. § 41.41(a). Appellants respectfully submit that the Examiner's Answer has failed to remedy the deficiencies with respect to the final Office Action dated May 25, 2010, as noted in Appellants' Appeal Brief filed on February 8, 2011, for at least the reasons set forth below. Accordingly, Appellants respectfully request that the rejection of pending Claims 24, 26-30 and 44 be reversed.

II. THE REJECTION OF CLAIMS 24, 26-30 AND 44 UNDER 35 U.S.C. §103(a) SHOULD BE REVERSED BECAUSE THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS

Appellants respectfully request that the Board reverse the rejection of Claims 24, 26-30 and 44 under 35 U.S.C. §103(a) because the Examiner has still failed to establish a *prima facie* case of obviousness with respect to the cited references.

In the Examiner's Answer, the Examiner admits that "*Carter* . . . lacks removing excess chocolate, recycling chocolate, and removing particulates from the nozzle." See, Examiner's Answer, page 8, lines 16-20. The Examiner states, however, that "the suction [of *Covert*] is on when the nozzle meets the surface of the liquid in the mold cavity" and that "it would have been obvious to one of ordinary skill in the art that air was flowing, drawn by the vacuum, in the direction that the chocolate was being removed from the molds, and that the air flowing into the suction nozzle, would serve to keep the nozzle clear of any particulate matter, or congealed chocolate particles." See, Examiner's Answer, page 10, lines 13-14; page 11, lines 1-5. Appellants respectfully disagree.

In contrast, Appellants submit that all three cited references fail to disclose or suggest wherein the gaseous flow is blown through the suction orifice so that the flow ejects the particles in a direction that is the same as a passage direction of the flow of recycled coating agent as required, in part, by independent Claims 24 and 44. For example, previously the Examiner admitted that "*Carter* . . . lacks . . . removing particulates from the nozzle." See, final Office Action, page 2, line 25-page 3, line 3. The Examiner also previously admitted that "*Covert* . . . lacks removing particulates from the nozzle." See, final Office Action, page 3, lines 4-10. Instead, the Examiner cited *Ohlin* for the disclosure of expelling particles in the orifice using a gaseous flow. See, final Office Action, page 5, lines 12-14.

In response to the final Office Action, Appellants argued that it is clear that the air flow of *Ohlin*, which is sucked through suction conduit 29 by negative pressure, is not in a direction that is the same as a passage direction of the flow of recycled agent as is required, in part, by the present claims. Instead, it is clear that the recycle flow direction of *Ohlin* is in an upward direction while the gaseous flow direction of *Ohlin* is perpendicular to the recycle flow direction and is in a substantially horizontal direction. Appellants further argued that this is in direct contrast to the present claims, which require, in part, a positive pressure gaseous flow to be

blown through it so that the flow ejects the particles in a direction that is the same as a passage direction of the flow of recycled coating agent.

As a result of Appellants previous arguments, the Examiner appears to have abandoned use of *Ohlin* for disclosure of a gaseous flow to discharge particulates from a suction orifice and now asserts that “the suction [of *Covert*] is on when the nozzle meets the surface of the liquid in the mold cavity” and that “it would have been obvious to one of ordinary skill in the art that air was flowing, drawn by the vacuum, in the direction that the chocolate was being removed from the molds, and that the air flowing into the suction nozzle, would serve to keep the nozzle clear of any particulate matter, or congealed chocolate particles.” See, Examiner’s Answer, page 10, lines 13-14; page 11, lines 1-5. However, Appellants respectfully disagree and assert that a negative suction pressure is not the same as the presently claimed positive pressure gaseous flow that is blown through it so that the flow ejects the particles in a direction that is the same as a passage direction of the flow of recycled coating agent.

Indeed, Appellants also use suction to remove the excess coating agent. If such suction were sufficient to remove, for example, wafer particulates, the presently claimed positive gaseous pressure would not be necessary to eject such particles from the orifice. However, Appellants are expressly claiming wherein the gaseous flow is blown through the suction orifice so that the flow ejects the particles in a direction that is the same as a passage direction of the flow of recycled coating agent. This is in direct contrast to both (i) the gaseous flow direction of *Ohlin*, which is perpendicular to the recycle flow direction and is in a substantially horizontal direction; and (ii) the liquid suction of *Covert*, which fails to provide the same function as the presently claimed positive gaseous flow.

The cited references also fail to disclose the inside of the container being sprayed with an excess quantity of coating agent as recited, in part, by independent Claims 24 and 44. The Examiner admits that *Carter* fails to disclose an excess quantity of coating agent and instead asserts that *Covert* discloses the use of excess chocolate. See, non-final Office Action, page 5, lines 1-9 and 21-22. However, the portion of *Covert* relied on by the Examiner merely discloses that molds have been “filled” with chocolate, not that they have been “sprayed” with an excess quantity of chocolate. See, *Covert*, column 1, lines 41-47. When describing its suction removal of chocolate from molds, *Covert* states that “multiple cavity molds 7, which have been previously filled in a depositing machine, are carried by a conveyor 8 into position beneath

suction nozzles 9.” See, *Covert*, column 1, lines 42-45. This difference is significant because if the entire ice cream cone were completely filled with liquid chocolate, rather than spraying the chocolate only on the inner wall of the cone, the ice cream cone would immediately soften and lose its crispiness. Nowhere does *Covert* disclose or even suggest that its molds are “sprayed” with an excess quantity of chocolate, nor does the Examiner cite support for such claimed element.

In the Examiner’s Answer, the Examiner states that “a patent shall be presumed valid[] (35 USC 282)” and “therefore, one must presume that the coating of *Carter* is sufficient to fully coat the interior of the ice cream cone.” See, Examiner’s Answer, page 10, lines 1-5. Appellants respectfully disagree, however, and submit that the legal presumption of validity of a patent is not the same as a presumption of the disclosure of certain subject matter in a patent. Indeed, Appellants submit that it is erroneous for the Examiner to conclude that the presumption of validity afforded to a patent means that it discloses the subject matter asserted by the Examiner. For at least the above-mentioned reasons, Appellants respectfully submit that the cited references fail to disclose or suggest each and every element of the present claims.

In the Examiner’s Answer, the Examiner asserts that the skilled artisan would be motivated to combine the cited references because both *Carter* and *Covert* are concerned with the same type of problem, moving liquid chocolate in a trouble free manner, using heat, and air flow, and that *Ohlin* is directed to keeping a pipette clean, and removing entrained matter using a close fitting annular space and air flow. See, Examiner’s Answer, page 14, lines 19-22. Appellants respectfully disagree, however, and assert that there exists no reason why the skilled artisan would combine the cited references.

For example, one of ordinary skill in the art would have no reason to combine *Carter* and *Covert* because they are directed to different problems in different fields of endeavor. *Carter* is entirely directed to spraying a chocolate coating on the interior of an ice cream cone immediately before the cone is filled with ice cream. See, *Carter*, column 1, lines 56-60; column 2, lines 5-7. *Carter* teaches that “saving of the chocolate coating material is effected because it is not necessary to provide a large quantity in accordance with the method of the present invention since sufficient time is not permitted for the absorption of an unnecessary and excessive amount of chocolate into the pores of the cones.” See, *Carter*, column 2, lines 17-22. Therefore, it is apparent that no

excess chocolate is generated in the ice cream cone production process of *Carter* and *Carter* is completely unconcerned with the removal of excess chocolate in the bottom of its cone.

The Examiner states that “*Carter* is referring to the prior art’s coating of both the outside and inside of the cone” when *Carter* states that “a large quantity of chocolate was not necessary. See, final Office Action, page 8, lines 5-10. Appellants respectfully disagree and submit that *Carter* expressly states that “[t]he chocolate coating in accordance with this invention may also be applied to the interior of a container without a pastry cone therein.” See, *Carter*, column 2, lines 30-33. In contrast to the Examiner’s statement that “*Carter* is referring to the prior art’s coating of both the outside and inside of the cone,” it is clear that *Carter* discusses the disadvantages of the prior art using a coating on both sides of the cone, and states that a “saving of the chocolate coating material is effected” when the coating is not applied to both sides. As such, *Carter* limits use of chocolate for coating purposes.

In contrast to *Carter*, *Covert* is entirely directed to suction removal of an excess quantity of chocolate in a mold during the manufacture of chocolate shells for filled candies. See, *Covert*, column 1, lines 1-13. *Covert* states that “it is a purpose of the invention to eliminate the need for inverting the molds to pour off excess chocolate and then to scrape the mold faces clear of spilled chocolate.” See, *Covert*, column 1, lines 6-9. Because *Covert* involves the manufacture of filled candy chocolate shells in molds, *Covert* is entirely unconcerned with the problems related to an excess quantity of chocolate in a consumable ice cream cone. As such, one of ordinary skill in the art would have no reason to combine the ice cream cone manufacturing process steps of *Carter* with the suction removal step of *Covert* to arrive at the present claims.

Additionally, *Ohlin* is entirely related to the cleaning of an exterior of an elongated body. See, *Ohlin*, Abstract. Accordingly, it is clear that *Ohlin* is not directed to the “preparation of chocolate containing comestibles for human consumption,” which the Examiner alleges is the common thread to the cited references.

In sum, not only do the cited references fail to disclose or suggest each and every element of the present claims, but the skilled artisan would have no reason to arrive at the claimed invention using the cited references in the absence of hindsight. Accordingly, Appellants respectfully submit that Claims 24, 26-30 and 44 are novel, nonobvious and distinguishable from the cited references and are in condition for allowance.

III. CONCLUSION

For the foregoing reasons, Appellants respectfully submit that the Examiner's Answer does not remedy the deficiencies noted in Appellants' Appeal Brief with respect to the final Office Action. Therefore, Appellants respectfully request that the Board of Appeals reverse the obviousness rejections with respect to Claims 24, 26-30 and 44.

No fee is due in connection with this Reply Brief. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00754 on the account statement.

Respectfully submitted,

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